

00-0974 J.J. v. Quality Distribution Inc. Issued: 3/11/02

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Quality Distribution, Inc. and its workers compensation insurance carrier, United Pacific Insurance (referred to jointly hereafter as "Quality") ask the Utah Labor Commission to review the Administrative Law Judge's order awarding interim subsistence benefits to J. J. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **ISSUE PRESENTED**

Quality contends Ms. J. cannot be awarded retroactive interim subsistence benefits under §34A-2-413(6)(b)(ii) of the Act.

### **BACKGROUND**

The following facts are not in dispute. On October 27, 1998, Ms. J. suffered wrist and pelvis injuries in a work accident at Quality. She returned to work in January 1999, but resigned on September 17, 1999, due to the continuing effects of her injuries. Since then, she has been unable to return to work at Quality or perform other work reasonably available to her.

Quality accepts liability for workers' compensation benefits due Ms. J. for her work injuries and has paid Ms. J.'s medical expenses, temporary disability compensation, and permanent partial disability compensation based on an 11% whole person impairment.

On the foregoing facts and pursuant to §34A-2-413 of the Act, the ALJ found Ms. J. to be permanently and totally disabled subject to further proceedings to determine whether she could be reemployed or rehabilitated. As required by §34A-2-413(6)(b)(i) of the Act, the ALJ ordered Quality to pay subsistence benefits to Ms. J.. The ALJ further directed that such subsistence benefits be paid retroactive to September 18, 1999, the day after Ms. J. quit work at Quality.

### **DISCUSSION AND CONCLUSION OF LAW**

Quality contends that it should not be required to pay retroactive subsistence benefits to Ms. J. any earlier than the date of the ALJ's interim order. While §34A-2-413(6)(b)(i) of the Act directs the ALJ to order the initiation of subsistence benefits, the Act does not specify the date such payments should begin. The Commission considered this issue as it promulgated rules for administration of §34A-2-413 and concluded that the date for commencement of subsistence benefits should be decided on a case by case basis. For that reason, the Commission's Rule 612-1-10 leaves that judgment to the discretion of the ALJ, according to the facts of each case and subject to agency and appellate review.

In this case, it is clear Ms. J. has been unable to hold a job or earn a living since the time her work injuries forced her to leave employment at Quality. It is appropriate that she receive retroactive subsistence benefits for the period when she had no income from either work or the workers' compensation system. Ms. J. concedes she received payment of permanent partial disability compensation through October 2, 1999. Consequently, her subsistence benefits should not commence until October 3, 1999. Finally, §34A-2-413(4)(b) requires that the ALJ's final order in this matter credit Quality for any previous disability compensation paid to Ms. J..

## **ORDER**

The Commission denies Quality's motion for review and affirms the decision of the ALJ, except that the date for commencement of subsistence payments to Ms. J. is changed from September 18, 1999, to October 3, 1999. Ms. J.'s claim is remanded to the ALJ for further proceedings required by §34A-2-413 of the Act. It is so ordered.

Dated this 11<sup>th</sup> day of March, 2002.

R. Lee Ellertson, Commissioner